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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/640,346	08/12/2003	Jian Chung Wang		7721

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EXAMINER

PIERRE LOUIS, ANDRE

ART UNIT PAPER NUMBER

2123

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/640,346	Applicant(s) WANG, JIAN CHUNG	
	Examiner Andre Pierre-Louis	Art Unit 2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,9-11,14 and 17-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-2,9-11,14,17-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. The amendment filed on 08/03/2006 has been received and fully considered.
2. Claims 3-8, 12-13, and 15-16 are cancelled; and now, claims 1-2, 9-11, 14, 17-27 are presented for examination.
3. Regarding the objection to the claims, the examiner withdraws the objection in view of the amendment.

Response to Arguments

4. Applicant's arguments filed 08/03/2006 have been fully considered but they are not persuasive.

4.1 Applicant argues that the combined references cited do not teach the database includes the network protocols and the functions of the element, the examiner respectfully disagrees and relies on Piesco figures 1-4 along with their description and pg. 1-4 (0015-0034), in addition to the cited section of the secondary reference, for support of the rejection of all the limitations required in the claims. The applicant is further directed to the combined references cited figures along with their description, as the examiner relies on more than one reference in the rejection of the claims.

4.2 Applicant argues that combined references cited do not teach the at least one administrative workstation recited in the claims and the MAC address and that the references cited do not teach all the steps of the independent claims, the examiner respectfully disagrees, as the rejection set forth below clearly shows the examiner's position. However, the applicant is further directed to the combined references figures

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along with their description and advises to carefully consider the examiner's assumption and/or interpretation below.

4.3 While the applicants believe that the independent claim along with the dependent claims should be found allowable, the examiner respectfully disagrees and asserts that the combined references cited teach the entire claimed invention. Found the applicants' arguments non-persuasive, the rejection of the independent claim along with their dependencies is maintained, as shown below.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5.0 Claims 1-2, 9-11,14,17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piesco (USPG_PUB No. 2003/0212908), in view of Nakamoto et al. (USPG_PUB No. 2004/0088605).

5.1 In considering the independent claims 1 and 9, Piesco substantially teaches a network testing apparatus for performing network simulation tests and traffic tests in alternative modes, the network testing apparatus comprising: a plurality of communication ports (*fig.1-4, item v1-v10, pg.1-3 (0015-0030)*); a software module (*fig.1-3 & their description*), comprising: a network simulating database for storing a plurality of network simulating models (*fig.1-4, item #11, pg.1-3 (0015-0030)*); a network protocol database for storing a plurality of network protocols (*fig.1-4, item #11, pg.1-3*

(0015-0030); a simulation processing module for selecting one of the network simulating models and one of the network protocols, and generating a first traffic generating command when the network testing apparatus is in network simulating test mode (*fig. 1-4, pg. 1-3 (0015-0030)*); and a traffic generation controlling module for generating a second traffic command when the network testing apparatus is in a traffic generating mode (*fig. 1-4, item #13, pg. 1-3 (0015-0030)*); a hardware module (*fig. 1-3 & their description*), comprising: a traffic generating apparatus (*fig. 1-4, item #13, pg. 1-3 (0015-0030)*); and a media access control for transmitting the generated traffic to a corresponding communication port (*fig. 1-4, pg. 1-3 (0015-0030)*). Piesco further teaches the workstation, the model-designing module (*see fig. 1-4*). Although Piesco does not clearly state the term the MAC, one ordinary skilled would know that the media access control would need to be present for communication purposes in the network. However, Nakamoto et al. teaches a method and system for testing networks comprises the processing unit *item 160*, the plurality of communication ports *item 115*, and a computer component to transmits packets through the appropriate ports (115) (*see fig. 1-6, pg. 2-3 (0020-0025)*). Piesco and Nakamoto are analogous art because they are from the same field of endeavors and that the network testing method and system teaches by Piesco is similar to that of Nakamoto et al. Therefore, it would have been obvious at the time of the applicant's invention to combine the system of Piesco with Nakamoto et al. for the purpose of transmitting traffic to its corresponding ports because Nakamoto further teaches the improvement of performance and data processing capability (*pg. 1 (0009)*).

5.2 As per claim 2, the combined teaching of Piesco and Nakamoto et al. substantially teach the network testing apparatus is operated in either of two modes: a network simulating test mode or a traffic generator operating mode (see *Piesco fig.1-4, pg.1-3 (0015-0030)*; also *Nakamoto et al. fig.1-6 & their description*).

5.3 Regarding claim 10, the combined teaching of Piesco and Nakamoto et al. substantially teach the at least one administrative workstation is connected to the network testing apparatus through a network (see *Piesco fig.1-4, pg.1-3 (0015-0030)*; also *Nakamoto et al. fig.1-6 & their description*).

5.4 With regards to claim 11, the combined teaching of Piesco and Nakamoto et al. substantially teach the at least one administrative workstation is connected to the network testing apparatus directly (see *Piesco fig.1-4, pg.1-3 (0015-0030)*; also *Nakamoto et al. fig.1-6 & their description*).

5.5 As per claim 14, the combined teaching of Piesco and Nakamoto et al. substantially teach the simulation test parameters comprises the network simulating model, the network protocol, and the first traffic generating parameters ((see *Nakamoto et al. fig.1-6, pg.2-4 (0020-0043)*; also *Piesco fig.1-4 & their description*; also *pg.1-3 (0015-0030)*)).

5.6 As per claim 17, the combined teaching of Piesco and Nakamoto et al. substantially teach the second traffic generating parameters comprise traffic rate, packet content and packet length (see *Nakamoto et al. fig.1-6, pg.2-4 (0001-0009, 0020-0043)*; also *Piesco fig.1-4 & their description*; also *pg.1-3 (0015-0030)*)).

5.7 With regards to claim 18, the combined teaching of Piesco and Nakamoto et al. substantially teach a network testing method for performing either network simulation tests or traffic tests by using a network testing apparatus, the network testing method comprising: setting the network testing apparatus in a network simulating test mode or a traffic generator operating mode (*see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030)*); setting simulation test parameters, and transmitting the simulation test parameters to the network testing apparatus when the network testing apparatus is set in the network simulating test mode, wherein the simulation test parameters comprise first traffic generating parameters (*see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030)*); and receiving the simulation test parameters, selecting a network simulating model and a network protocol according to the simulation test parameters, and controlling traffic generation to perform network simulation tests (*see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030)*).

5.8 As per claim 19, the combined teaching of Piesco and Nakamoto et al. substantially teach further comprising: setting second traffic generating parameters when the network testing apparatus is set in the traffic generator operating mode (*see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030)*); and receiving the second traffic generating parameters, and controlling traffic generation to perform traffic tests according to the second traffic

generating parameters (see *Nakamoto et al. fig.1-6, pg.2-4 (0017-0043)*; also *Piesco fig.1-4 & their description*; also *pg.1-3 (0015-0030)*).

5.9 Regarding claim 20, the combined teaching of Piesco and Nakamoto et al. substantially teach the steps of: designing the network simulating model (see *Piesco fig.1-4, pg.1-3 (0015-0030)*; also *Nakamoto et al. fig.1-6 & their description*); transmitting the designed network simulating model to the network testing apparatus; and storing the network simulating model in a network simulating database (see *Nakamoto et al. fig.1-6, pg.2-4 (0017-0043)*; also *Piesco fig.1-4 & their description*; also *pg.1-3 (0015-0030)*).

5.10 With regards to claim 21, the combined teaching of Piesco and Nakamoto et al. substantially teach the network testing apparatus is communicatively located between a tested equipment and a network which the tested equipment is connected to (see *Nakamoto et al. fig.1-6, pg.2-4 (0017-0043)*; also *Piesco fig.1-4 & their description*; also *pg.1-3 (0015-0030)*).

5.11 With regards to claim 22, the combined teaching of Piesco and Nakamoto et al. substantially teach that when the network testing apparatus is in the network simulating test mode, the network simulation database is further receiving the network simulating model from an administrative workstation, and for storing the network simulating model (see *Nakamoto et al. fig.1-6, pg.2-4 (0020-0043)*; also *Piesco fig.1-4 & their description*).

5.12 As per claim 23, the combined teaching of Piesco and Nakamoto et al. substantially teach that the simulation processing module is for receiving simulation test parameters from the administrative workstation, and for selecting the network simulating

model and a network protocol according to the simulation test parameter (see *Nakamoto et al. fig.1-6, pg.2-4 (0020-0043); also Piesco fig.1-4 & their description*).

5.13 Regarding claim 24, the combined teaching of Piesco and Nakamoto et al. substantially teach that the network testing parameters comprise first traffic generating parameters and the simulation processing module generates the first traffic generating command according to the first traffic generating parameters (see *Nakamoto et al. fig.1-6, pg.2-4 (0020-0043); also Piesco fig.1-4 & their description*).

5.14 As per claim 25, the combined teaching of Piesco and Nakamoto et al. substantially teach that when the network testing apparatus is in the traffic generator operating mode, the traffic generating controlling module is further for receiving second traffic generating parameters, and for generating the second traffic generating command according to the second traffic generating parameters (see *Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description*).

5.15 With regards to claim 26, the combined teaching of Piesco and Nakamoto et al. substantially teach that the administrative workstation further comprises a network model designing module, for designing the network simulating model and transmitting the network simulating model (see *Nakamoto et al. fig.1-6, pg.2-4 (0020-0043); also Piesco fig.1-4 & their description*).

5.16 As per claim 27, the combined teaching of Piesco and Nakamoto et al. substantially teach that the network simulating database is further for receiving and storing the network simulating model (see *Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description*).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6.1 Creamer et al. (U.S. Patent No. 6,519,228) teaches a system and method of operation for verifying and validating public switch telephone networks to IP network services.

6.2 McKeown et al. (USPG_PUB No. 2005/0027851) teaches a broadband communication.

6.3 Shevenell et al. (USPG_PUB No. 2002/0184528) teaches a method and apparatus for security management via vicarious network.

6.4 John et al. (USPG_PUB No. 2003/0033406) teaches an apparatus and method for network load testing.

6.5 Hannel et al. (USPG_PUB No. 2003/0088664) teaches a method and system for testing stateful network communication devices.

6.6 Van Tetering et al. (U.S. Patent No. 5,343,463) teaches a performance measurement system for a telecommunication path and device used therein.

6.7 Chirashnya et al. (U.S. Patent No. 6,560,720) teaches an error injection apparatus and method in a computer network system.

6.8 D'Amico et al. (U.S. Patent No. 6,889,339) teaches an automated DSL network testing software tool.

6.9 Schwaller et al. (U.S. Patent No. 6,625,648) teaches a method, system, and computer program for testing network performance.

6.10 Lee (USPG_PUB No. 2003/0037155) teaches a system and method for monitoring and testing of network element.

7. Claims 1-2, 9-11,14,17-27 are rejected and **THIS ACTION IS MADE FINAL.**

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Pierre-Louis whose telephone number is 571-272-8636. The examiner can normally be reached on Mon-Fri, 8:00AM-4:30PM.

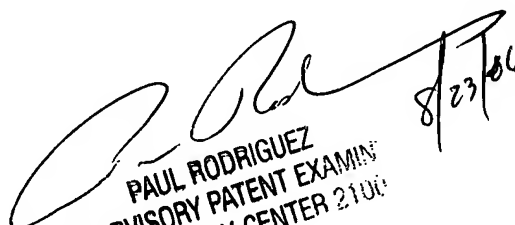
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul L. Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 23, 2006

APL


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8/23/06